

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

In re: CHARLES B. EASLEY AND  
PATRICIA A. EASLEY,

Debtors,

CHARLES B. EASLEY SR. *et al.*,

Appellants,

v.

COLLECTION SERVICE OF NEVADA

Appellee.

Bankruptcy Case No. BK-S-22239-GS

Case No. 2:15-cv-00395-LDG

**ORDER**

Appellants Charles B. Easley, Sr., and Patricia A. Easley filed a voluntary bankruptcy appeal. They subsequently brought a motion against appellee Collection Service of Nevada pursuant to 11 U.S.C. §362(k) for contempt for violating the automatic stay. The Bankruptcy Court determined that Collection Service had violated the stay, that the violation was willful, and that the Easleys were damaged in the amount of \$1,295. The Bankruptcy Court further awarded Easleys their attorney's fees for "the services [counsel] has provided to the debtors related to enforcing the automatic stay and remedying the stay violation, but excluding any fees subsequently incurred in pursuing the damages award,

1 itself.” In so doing, the Bankruptcy Court cited *Sternberg v. Johnston*, 595 F.3d 937 (9<sup>th</sup>  
2 Cir. 2010). Again relying on *Sternberg*, the Bankruptcy Court subsequently awarded  
3 attorney’s fees in the amount of \$1,277 representing \$422 incurred to enforce the  
4 automatic stay and \$855 incurred to prepare the fee application.

5 The Easleys appeal both the award of damages and the award of attorney’s fees as  
6 inadequate.

7 Subsequent to the filing of this appeal and the parties’ filing of their briefs, the Ninth  
8 Circuit overruled *Sternberg*, and held that §362(k) authorizes not only an award of  
9 attorney’s fees incurred in enforcing the automatic stay, but further authorizes “an award of  
10 attorney’s fees incurred in prosecuting an action for damages under the statute.” *In re*  
11 *Schwartz-Tallard*, 803 F.3d 1095, 1101 (9<sup>th</sup> Cir. 2015). Given that the Bankruptcy Court  
12 expressly relied upon *Sternberg* and limited attorney’s fees to only those incurred to  
13 enforce the stay, the court must vacate the award of attorney’s fees and remand for further  
14 consideration in light of *Schwartz-Tallard*.

15 Conversely, the Court will affirm the Bankruptcy Court’s award of damages.

16 In July 2012, Collection Service began efforts to contact Patricia Easley regarding a  
17 debt originally owed to Bennett Medical Services, which Bennett had assigned to Collection  
18 Service. On September 20, 2012, Collection Service contacted Patricia.

19 The Easleys filed their Chapter 13 voluntary bankruptcy petition on October 31,  
20 2012. The Easleys listed Bennett as a creditor, but did not list Collection Service as a  
21 creditor.

22 In July 2013, Collection Service filed a collection action against Patricia, and served  
23 the Complaint and Summons on her.

24 On August 6, 2013, Patricia asked Collection Service to provide an itemized  
25 statement of the bill underlying the collection suit.

1 On August 30, 2013, Patricia and Collection Service established a repayment plan in  
2 which she would make monthly payments of \$25. Collection Service received the first \$25  
3 payment on September 30, 2013, and an additional \$50 on November 19, 2013. Patricia  
4 made no further payments. Collection Service obtained a default judgment against her in  
5 January 2014. A Notice of Entry of Default was sent to Patricia on March 12, 2014.

6 On March 21, 2014, Collection Service filed a Writ of Execution. On April 11, 2014,  
7 Patricia called Collection Service and indicated that she had received garnishment  
8 information for her employer. During this conversation, she indicated to Collection Service  
9 that she had an appointment that day with an attorney "on filing bankruptcy."

10 On April 22, 2014, Easleys' counsel sent Collection Service's counsel a fax  
11 demanding they cease the garnishment because the Easleys were in bankruptcy. The Las  
12 Vegas Constable garnished Patricia's wages on April 25, and May 9, 2014. Collection  
13 Service received a formal notice of the Easleys' bankruptcy on May 12, 2014, and on that  
14 same date faxed a release of execution to the Las Vegas Constable's Office and to  
15 Patricia's employer on May 12, 2014. Patricia informed Collection Service that her  
16 employer had not received the release, and it sent a further release of execution on May  
17 20, 2014. Nevertheless, Patricia's wages were again garnished on May 23, and June 9,  
18 2014.

19 The Easleys filed their motion for contempt on June 13, 2014. The funds garnished  
20 from Patricia were returned to her prior to the Bankruptcy Court's evidentiary hearing on  
21 damages. The Bankruptcy Court concluded that Collection Service had willfully violated  
22 the automatic stay and awarded \$1,295 in damages, representing the \$75 paid by Patricia  
23 to Collection Service, \$100 for lost wages, \$80 for obtaining cash advances as a result of  
24 the garnishment, \$10 for a co-pay incurred to obtain medical treatment related to the  
25 emotional distress caused by the garnishment, \$30 for medication prescribed as a result of  
26 the medical treatment, and \$1,000 for emotional distress. The Court further noted that the

1 \$75 had already been repaid, and credited the repayment against the damages, leaving an  
2 outstanding balance of \$1,220.

3 The Bankruptcy Court concluded that Collection Service first received notice of the  
4 Easleys bankruptcy on April 22, 2014. The Easleys argue that the Bankruptcy Court erred  
5 by not attributing Bennett's awareness of the bankruptcy to Collection Service. The  
6 Easleys have not offered any meritorious argument that the notice received by Bennett  
7 should be imputed to Collection Service.

8 The Easleys argue, alternatively, that the Bankruptcy Court erred in not finding that  
9 Patricia placed Collection Service on notice of the bankruptcy on August 30, 2013.  
10 Collection Service's log notes of that discussion, written with numerous ambiguous or  
11 unclear abbreviations, include the recitation, "Everything else is going twrds her bk  
12 payments." The Bankruptcy Court expressed its difficulty in concluding whether or not this  
13 log indicated Patricia had informed Collection Service of the bankruptcy. The court noted  
14 conflicting evidence on whether "bk" referred to "back" or "bankruptcy." The court further  
15 noted that Patricia testified, that the Bankruptcy Court found her to be a credible witness,  
16 and that she testified to having informed Collection Service of the bankruptcy. The  
17 Bankruptcy Court further noted, however, that she lacked clarity in her testimony. This  
18 brought into question the reliability of her statement that she had informed Collection  
19 Service of the bankruptcy.

20 Conversely, the Bankruptcy Court noted the log notes also indicated the  
21 conversation continued after "bk" reference, and that conversation reflected an attempt to  
22 set up payments of \$25 a month going forward. While acknowledging that it was within the  
23 "realm of plausibility" that such a conversation could occur after receiving a notice of  
24 bankruptcy, the Bankruptcy Court relied on several factors that such was not the case in  
25 this matter. Among these indicia, the court noted the amount of the asserted debt, that the  
26 conversation was an effort to set up an ongoing payment plan. Noting that the burden of

1 proof rested upon the debtor, the Bankruptcy Court concluded that the Easleys had not met  
2 their burden of showing that Collection Service's log of the August 30, 2013, conversation  
3 with Patricia indicated that she had provided notice of the bankruptcy in that conversation.

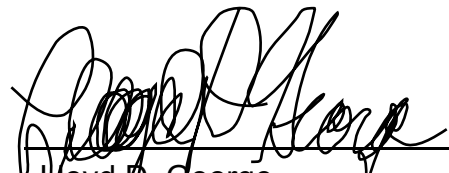
4 The Easleys have not shown that the Bankruptcy Court clearly erred in its finding.  
5 The parties presented conflicting evidence. The Bankruptcy Court expressly  
6 acknowledged that the parties had presented conflicting evidence, and acknowledged the  
7 evidence offered by the debtors. The Bankruptcy Court resolved the conflict as a tie, which  
8 required a finding against the debtors as the party bearing the burden of proof. The finding  
9 of fact that "bk" did not refer to bankruptcy in Collection Service's August 30, 2013, log  
10 notes was not clearly erroneous.

11 The Easleys' argument that the Bankruptcy Court abused its discretion in limiting  
12 emotional distress damages to \$1,000 is without merit, as is their argument that punitive  
13 damages are warranted.

14 Accordingly, for good cause shown,

15 THE COURT **AFFIRMS** the award of actual damages, **VACATES** the award of  
16 attorney's fees, and **REMANDS** to the Bankruptcy Court for further consideration of the  
17 award of attorney's fees in light of *In re Schwartz-Tallard*.

18  
19 DATED this 30 day of September, 2016.

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21   
22 Lloyd D. George  
23 United States District Judge  
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